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SB 1045 (WIENER) (amended May 1, 2018) – OPPOSE

May 8, 2018

Honorable Ricardo Lara
Chair, Senate Appropriations Committee
California State Senate
Capitol Building, Room 2206
Sacramento, CA 95814

RE: SB 1045 (WIENER) (amended May 1, 2018) – OPPOSE

Dear Senator Lara:

The signatory members listed below all advance and protect the civil rights of Californians with disabilities and who are experiencing homelessness and regret to inform you that we respectfully **oppose SB 1045.** This bill is scheduled for hearing in the Senate Appropriations Committee on May 14, 2018.

SB 1045 was heard in the Judiciary Committee on April 17 and amendments were taken in the committee. This bill was also heard in the Public Safety Committee and amendments were taken there also. Those amendments do not remove our opposition.

SB 1045 would establish, outside of the Lanterman-Petris-Short Act (LPS) and the Assisted Outpatient Treatment Demonstration Project Act (AOT), a new process for the appointment of a conservator for a person who is chronically homeless and incapable of caring for their own health and well-being due to acute and severe mental illness and a severe substance abuse disorder. An individual would meet the new criteria to be conserved if he or she is homeless and is a purported high frequency emergency department user, has a history of purported high frequency jail detention due to behavior resulting from severe mental illness or substance abuse disorder, or a history of frequent placement under a 5150 involuntary hold as a result of a mental health disorder.

According to the author, the unprecedented housing affordability crisis accompanied by significant untreated mental illness and drug addiction suggests there is a need for “greater flexibility to conserve” individuals “who are chronically homeless and severely mentally ill or suffer from severe substance abuse disorders.” For that reason, the author proposes an

entirely new process outside of the existing involuntary hold and commitment law to provide housing and services to homeless mentally ill individuals.

We oppose the extensive expansion of involuntary holds, treatment and conservatorships this bill proposes because it restricts the personal autonomy rights of persons with disabilities and it lacks any assurances of housing and services.

Background:

In 1968, LPS was enacted to provide a protective legal structure for the involuntary civil commitment of individuals who, due to a mental illness, pose a danger to self or to others, or who are gravely disabled. It includes a process, known as a "5150 hold," or a temporary hold, where a person can be taken in custody for increasing temporary periods upon probable cause that they are a danger to self, a danger to others, or gravely disabled as a result of a mental health disorder. The Act also includes a process for the appointment of a conservator for a person who has been involuntarily detained and is gravely disabled as a result of a mental disorder or impairment. LPS defines "gravely disabled" as an individual's inability to provide for his or her basic personal needs for food, clothing or shelter, as a result of a mental health disorder. Most individuals on conservatorships live in locked, psychiatric institutions.

The Legislature has also established AOT, known as "Laura's Law", to allow counties to provide services for individuals with serious mental illnesses when a court determines that a person is unlikely to survive safely in the community without supervision and the person has a history of lack of compliance with treatment for his or her mental illness. Lack of compliance is evidenced by a person's mental illness being a substantial factor in necessitating hospitalization within the last 36 months. To implement an AOT program, a county must opt into the program and meet specific planning and service delivery requirements. The City and County of San Francisco has opted into full implementation of AOT.

We are opposed to SB 1045 because it: 1) needlessly expands involuntary care for individuals in a restrictive and confined environment beyond what is allowed in current law; 2) proposes a solution that does not meet the sponsors' goals of addressing homelessness and medical care; 3) is

dangerously expansive at the expense of individual rights; 4) does nothing to ensure that those proposed to be conserved under the expansion will be provided with adequate housing, food, clothing, or medical and behavioral health care; and 5)makes homelessness a status that allows for disparate treatment under the law.

SB 1045, through the creation of a new type of homeless conservatorship, needlessly expands involuntary care for individuals in a restrictive and confined environment beyond what is current law.

LPS was built upon furthering the personal autonomy rights of all people with disabilities, and particularly the right to self-direction and self-determination. This bill rests on the assumption that mental illness may cause resistance to care when in fact the lack of housing, services or medical care is responsible for the absence of care, or the intrusive conditions placed on receiving care results in individuals living on the streets in order to retain some level of self-determination.

Additionally, AOT already allows for the involuntary treatment of individuals "unable to carry out transactions necessary for survival or to provide for basic needs" if voluntary care has been rejected. Homeless individuals refusing available care for life threatening medical conditions meet this definition and are regularly conserved under LPS by courts when found necessary. There has not been any showing of current barriers in existing law or practice that prevent counties from providing the care and services they propose with this bill.

Likewise, the population that the author seeks to target with this bill, and the population intended for treatment through AOT, seem to be the same. The AOT criteria include that a person is unlikely to survive safely in the community without supervision and has a history of hospitalization or incarceration. The services required by AOT include the very services that could be included in the bill. It should also be noted, the bill only requires an "appropriate placement," which can mean extraordinarily broad housing options including, locked facilities, SROs, or out of county placements. There is no *requirement* in the bill that there be community-based residential care, supportive housing, or any other particular services as there is in AOT, only that there be an "appropriate placement," and no standards to establish what "appropriate" means.

What is also conspicuously absent in the bill are the many service requirements and protections included in AOT. See Welfare and Institutions Code Section 5348 (a). Thus, SB 1045 appears to sweep within its ambit all of the intended individuals covered by AOT but lacks protections, including an offer of voluntary services first, or any actual service mandates

SB 1045 does not propose a solution that meets the sponsors' goals of addressing homelessness and the need for behavioral health care.

Nothing in this bill expands housing or access to medical and behavioral health services for individuals who are homeless and have behavioral and medical health treatment needs. Expanding voluntary services (e.g. Full-Service Partnerships, permanent supported housing) and access to quality, integrated medical care is more cost efficient, more effective, and more humane. Indeed, solutions that foster independence and self-direction are more successful than the forced and involuntary care this bill proposes.

As the City and County of San Francisco knows well, there are effective solutions for providing housing and services for people with mental illness, including supportive housing and Housing First policies. Housing First is the evidence-based idea that people need permanent, affordable places to live first and foremost. Supportive housing is affordable, permanent housing for people with mental health disabilities with services that help them live successfully in the community and is likewise evidence-based. Studies have shown that these models lead to reduced hospitalization and interaction with police, and increased quality of life. We know from experience that these sorts of programs work; there just are not enough of them.

Voluntary models are not just better for clients; they are better for the taxpayers. It costs more than $227,000 per year to treat someone institutionalized in the state hospital system. The annual cost to provide supportive housing to an individual with mental illness is approximately $20,000.

Involuntary treatment means the county has the duty to house and treat the conservatees, which includes making physical and mental health services actually available. This bill puts the cart before the horse since the county is already unable to provide adequate services and housing to the homeless population

SB 1045 is dangerously expansive at the expense of individual rights.

SB 1045 steps away from the "gravely disabled" standard and instead uses a "serious mental illness and substance use disorder" standard *evidenced* by high frequency emergency department use, high frequency jail detention or high frequency 5150 detention. The danger is evident. For example, a high frequency emergency department use is five visits in a month to an emergency room. Why seeking medical care in an emergency room would provide a basis to hold a person involuntarily for at least one year is unclear.

Furthermore, only people who are homeless are subject to this new standard. This in effect creates a different standard of treatment and involuntary confinement that is based solely on one's economic status. If someone is required to be confined for their own safety, then one's housing status is irrelevant.

More dangerous, however, is that a "professional person in charge of a hospital facility providing emergency services may recommend conservatorship" under this bill. That is, a hospital administrator not an examining caregiver. The conflict of interest is clear, a hospital administrator can recommend a conservatorship over an individual who is making "five or more monthly individual patient visits to an emergency department," a cost that the hospital need not bear for at least a year if a conservatorship is established upon the recommendation of the hospital administrator.

The expanse of this bill raises significant concerns for us and it appears the objectives are more about a round-up of mentally ill homeless individuals than about providing services and housing so that these individuals could decide for themselves to accept treatment. While we do not impute any illicit motives to either the sponsors or authors of this bill, the dearth of *workable* solutions threatens unintended outcomes when the language veers so significantly from the existing LPS or AOT standards.

We have gone down this path before. In 1959, as many as 37,500 Californians were held involuntarily in state-run institutions – some for their entire lives – in conditions widely found to be despicable and inhumane. It was an expensive and failed system. California appropriately emptied many of these mental health institutions in the 1970s. The problem with

deinstitutionalization was not that individuals moved out of locked wards; it was that the promised community-based services and housing never materialized. The current housing crisis has only exacerbated this shortage.

SB 1045 does nothing to ensure that the proposed conservatees under the expansion will be provided adequate housing, food, clothing, or medical and behavioral health care if a conservatorship is established.

We assert there is no point to more aggressive intervention if there is no place to house and treat the people who need help. Nothing in this bill expands services or creates more housing, or medical or mental health care, which is what the real problem is. There are already significant delays in receiving services and housing in San Francisco and throughout the state -- ER, specialty services, substance abuse treatment, full service partnerships, and transitional and supported housing are not readily available. Which raises the question, if those services are available, why are they not being used now for those who do not need conservatorships or those that are conserved under LPS or AOT? If they *are* being used, for whom will services be reduced to accommodate these new conservatorships?

Fundamental questions that remain unanswered regarding the need for this bill should be answered before it moves forward.

As noted above, we do not believe that this bill is based on a specific clear or factual underpinning to support moving away from the LPS statute that has served for decades to balance the needs of individuals with behavioral illnesses and the protection of their own and others' safety, or even the more recent AOT statute. We do not pose these questions rhetorically. We have probed the sponsors for answers to the following questions but have not received satisfactory responses. There has not been thoughtful documentation provided to us that would support veering from the existing balances in LPS and AOT. As the committee considers this bill, we would suggest these questions be posed.

1. **Why can't the stated goals behind this bill be accomplished under existing law? Where are the legal or operational barriers that stand in the way of using LPS or AOT?**

2. How many new conservatorships will be established under this bill? In San Francisco and statewide? The author's office states that only 40-50 new conservatorships in a year would be established under this bill. The justification for that number is unclear but it does suggest that the need for such an expansion is unnecessary and other existing solutions are available.

3. Once the conservatorships are established, how will the following be provided?

a. What housing will be provided to the new conservatees and where will it be provided? The proposed amendments to the bill only require "an appropriate placement" for housing. Those same amendments struck the requirement that "supportive housing that provides wraparound services" be provided.

b. How will food and clothing be provided to the new conservatees?

c. What health care and behavioral health care will be provided to the new conservatees and how will it be provided?

4. What are the projected costs for the food, clothing, shelter and health and behavioral care for the new conservatees, what are the sources of the costs, and will the additional costs be displacing services in other areas?

Bill Costs

We suspect that because these questions remain largely unanswered costs are difficult for this committee to estimate. The broad scope of the bill would increase costs dramatically. The increased number of Individuals to be conserved under the bill would be significant since the very intent is to reach those that are not being conserved under the existing law. The courts, county conservators, and county mental health programs will see significant costs in just the processing of the conservatorships. Additionally, once conservatorships are established the county then becomes responsible for the food, clothing, housing, medical care and behavioral health care.

Conclusion

For these reasons, we collectively and respectfully oppose SB 1045. Please contact us if you have any questions about our position or if we can provide any further information.

Sincerely,

American Civil Liberties Union
California Advocates for Nursing Home Reform
California Association of Mental Health Patients' Rights Advocates
California Association of Mental Health Peer Run Organizations
California Association of Social Rehabilitation Agencies
California Pan-Ethnic Health Network
Coalition on Homelessness San Francisco
Disability Community Resource Center
Disability Rights Advocates
Disability Rights California
Disability Rights Education and Defense Fund
Law Foundation of Silicon Valley
National Health Law Program
Sacramento Regional Coalition to End Homelessness
SEIU California
Western Center on Law and Poverty
Western Regional Advocacy Project

cc: Honorable Scott Wiener, California State Senate
Honorable Henry I. Stern, California State Senate
Brayden Borcherding, Legislative Director, Office of Senator Wiener
Honorable Members, Senate Appropriations Committee
Shaun Naidu, Consultant, Senate Appropriations Committee
Marisa Shea, Counsel, Senate Judiciary Committee
Stella Choe, Counsel, Senate Public Safety Committee
Karen Lange, Shaw/Yoder/Antwih